Chapter 10 Audit and Auditors



[Section 139 to 148]

Sec	Name	Sec	Name
139	Appointment of Auditors	144	Auditor not to Render Certain Services
140	Removal, Resignation of Auditor and	145	Auditor to Sign Audit Reports, etc
	Giving of Special Notice		
141	Eligibility, Qualifications and	146	Auditors to Attend GM
	Disqualifications of Auditors		
142	Remuneration of Auditors	147	Punishment for Contravention
143	Powers and Duties of Auditors and	148	CG to Specify Audit of Items of Cost in
	Auditing Standards		Respect of Certain Companies

	Form	Section	Purpose
	ADT-1		Form to inform the Registrar regarding the appointment of auditor by the co.
	ADT-2 ADT-3	140	Application for removing the auditor before the expiry of their term by the co.
/	ADT-3	140	Notice of resignation of auditor
/	1DT-4	143(12)	Form to report any suspected fraud by the auditor to the Central Government



Section 177(1): Applicability of Audit Committee:

Following companies are required to constitute audit committee (AC):

- Listed Public Companies
- Unlisted public co having:
 - o PUSC >= 10 crores
 - o T/O >= 100 crores
 - o Outstanding loan, debentures, and deposits (in aggregate) > 50 crores

Note:

- 1. Exemptions JV/WOS/Dormant co
- 2. If ceases to fulfil conditions for 3 consecutive years Provision not applicable
- 3. Limits to be checked as existing on last date of latest audited financial statement.



Section 139: Appointment of auditors

- 1. Appointment of subsequent auditors and tenure:
 - Every co. shall, at the first AGM appoint an individual or firm or BC as an auditor,
 - > who shall hold office from conclusion of that meeting till conclusion of 6th AGM and,
 - > thereafter, till conclusion of every 6th AGM, and
 - > the manner of selection of auditor shall be as may be prescribed.

Rule 3: Manner of selection of Auditor:

1 Who will select the auditor?

In case where a company is:	Competent Authority:	Responsibility: [MCQ]
Required to constitute AC u/s 177 Not required to constitute such AC	Such AC shall - the Board shall -	 take into consideration Qualification and experience (Q&E) of proposed indv/ firm whether such Q&E are Commensurate with size and requirements of the co. while considering appointment, have regard to any order or pending proceeding related to professional Misconduct before ICAI or court.

- 2. AC/Board may call for such other info. form proposed auditor as it may deem fit.
- 3. Recommendation of name of auditor: Subject to sub-rule (1):
 - Where co. is required to constitute AC Such AC shall recommend name of indv/firm as auditor to Board for consideration.
 - > In other cases Board shall consider and recommend an indv/firm as auditors to members in AGM for appointment.
- 4. If Board agrees with AC recommendation further recommend to member in AGM for appt.
- 5. If Board disagrees Refer back to AC for reconsideration citing reasons for disagreement

What if AC decides not to reconsider original recommendation?

If AC, after considering reasons by Board, <u>decides not to reconsider</u> its original recom.:

Board shall record reasons for its disagreement with AC and send its own recom. for consideration of members in AGM; and

if Board agrees with recommendations of AC, it shall place the matter for consideration by members in AGM.

Before such appointment, the following shall be obtained from the auditor:

- Written consent of such auditor to such appointment
- Certificate from the auditor stating that: [LET the Proceedings begin!]

indv/firm is Eligible for appt. and is not disqualified under this Act or CA Act

proposed appt. is as per the Terms provided in this Act

proposed appt. is within Limits laid down by or under authority of the Act

list of Proceedings against auditor/audit firm or any partner thereof pending w.r.t. professional matters of conduct, as disclosed in the certificate, is true and correct

Note - Certificate shall also indicate whether auditor satisfied criteria u/s 141

On appointment of auditor: The company shall:

- > inform the auditor concerned of his or its appointment, and
- File notice (Form ADT-1) of appt. with RoC within 15 days of meeting in which auditor is appt. Explanation: For this Chapter, "appointment" includes reappointment

NFRA Rules:

Every BC [other than co. u/s 2(20)] formed in India + governed by NFRA shall inform NFRA (Form NFRA-1) w.r.t., the particulars of auditor appt. u/s 139 (1) within 15 days of such appt.

2. Tenure, re-appointment and cooling period of an auditor:

(For other companies, there is no tenure/cooling period)
The following companies (except OPC and small cos):

Listed UPC having

Private Ltd. cos.

All companies having public borrowings

o. PUSC >= 10 cr having PUSC >= 50 cr from bank/PFI or public deposit >= 50 cr

shall not appoint or re-appoint:

- (a) an individual as auditor for > 1 term of 5 consecutive years; and
- (b) an audit firm as auditor for > 2 terms of 5 consecutive years:

Cooling period:

individual auditor who has completed his term under clause (a)

Audit firm which has completed it term under clause (b)

shall not be eligible for re-appointment as <u>auditor</u> in the same company for 5 years from the completion of his term

Incoming auditors should not have common partner with retiring auditors:

As on date of appt., no audit firm having common partner(s) to other audit firm, whose tenure has expired immediately preceding the FY, shall be appt. as auditor of same company for 5 years:

 $\underline{\text{Note}}$ - Nothing contained in this sub-section shall prejudice the right of the company to remove an auditor or the right of the auditor to resign from such office of the company.

Rule 6: Manner of rotation of auditor:

- 1. AC shall recommend to Board Name of indv/firm who may replace incumbent auditor on expiry of term.
- 2. Where co. is required to constitute AC Board shall consider recommendation of AC <u>In other cases</u> Board shall itself consider rotation of auditors and recommend for appt. of next auditors by members in AGM

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- 3. For the purpose of the rotation of auditors-
 - (i) in case of an auditor, period for which indv/firm has held office as auditor prior to commencement of the Act shall be taken into account for calculating 5 or 10 consecutive years.
 - (ii) the incoming auditor shall not be eligible if it is associated with outgoing auditor under the same network of audit firms.

 \underline{Note} - "Same network" includes firms operating under same Brand name or Trade name or common Control (BTC)

4. Where co. has appointed 2 or more indv/firms or a combination thereof as joint auditors, co. may follow rotation of auditors in such a manner that both or all of the joint auditors, as the case may be, do not complete their term in the same year.

Explanation: For rotation of auditors:

- (a) break in term for 5 continuous years shall be considered as fulfilling requirement of rotation;
- (b) if a partner, who is in charge of an audit firm and also certifies the FS, retires from said firm and joins another firm of CAs, such other firm ineligible to be appt. for 5 years.

Refer Illustration in ICAI Module Pg. 10.10 and 10.11 (not imp. as it was transition provision)

3. Rotation of partners internally in an audit firm:

Subject to the provisions of this Act, members of a company may resolve to provide that:

- (a) in the audit firm appointed by it, the auditing partner and his team shall be rotated at such intervals as may be resolved by members; or
- (b) the audit shall be conducted by more than one auditor.
- 4. CG may, by rules, prescribe manner in which cos. shall rotate their auditors Mentioned above
- 5. Auditor in case of a Govt co. (Subsequent auditor)
 - > Notwithstanding anything contained in sub-section (1),
 - > in case of Govt. co. or any other co. owned/controlled (directly or indirectly) by CG or SG or partly by CG and partly by SG,
 - > the C&AG shall, in respect of a FY, appoint an auditor duly qualified to be appt.,
 - > within 180 days from commencement of FY,
 - > who shall hold office till conclusion of AGM.
- 6. First auditor in case of Company (other than Govt co.)
 - Notwithstanding anything contained u/ss (1),
 - > the first auditor of a co. (other than Govt. co) shall be appointed by BoD
 - > within 30 days from the date of registration of co. and
 - \triangleright in case of failure of BoD to appoint such auditor Inform the members, who shall within 90 days at an EGM appoint such auditor and
 - > such auditor shall hold office till conclusion of the first AGM.

- 7. Auditor in case of a Govt co. (First auditor)
 - > Notwithstanding anything contained in sub-section (1) or (5),
 - > in case of Govt. co. or any other co. owned/controlled (directly or indirectly) by CG or SG or partly by CG and partly by SG,
 - > the first auditor shall be appointed by C&AG
 - > within 60 days from the date of registration of the co. and
 - > in case C&AG fails to appt. such auditor within 60 days BoD shall appt. within next 30 days;
 - > and in case of failure of BoD to appoint within next 30 days Inform the members, who shall within 60 days at an EGM appoint such auditor and
 - > such auditor shall hold office till conclusion of the first AGM

8. Any casual vacancy in the office of an auditor shall:

Other than Govt co:	Fill casual vacancy:		
i.e., Co. whose accounts	> By BoD - 30 days		
are NOT subject to audit	> If vacancy due to resignation - Appt. to be approved at GM		
by C&AG	(Ordinary Resolution) within 3 months of BOD recommendation.		
	> Hold office till conclusion of next AGM		
Co. whose accounts are	C&AG to fill vacancy within 30 days.		
subject to audit by C&AG	Failure of C&AG - BoD to fill vacancy - Next 30 days		

9. Re-appointment of retiring auditor:

A retiring auditor may be re-appointed at an AGM, if:

- (a) he is not disqualified for re-appointment;
- (b) he has not given a notice unwillingness to be re-appointed in writing; and
- (c) SR has not been passed at that meeting:

appt. some other auditor or providing expressly that he shall not be re-appointed.

- 10. Where at any AGM, no auditor is appointed or re-appointed, the existing auditor shall continue to be the auditor of the company.
- 11. Where a co. is required to constitute AC u/s 177, all appointments, including the filling of a casual vacancy of auditor shall be made after taking into account recommendations of such committee.

Note: For this chapter:

- 1. "Appointment" includes reappointment
- 2. Word "firm" shall include a LLP incorporated under LLP Act, 2008
- 3. NFRA Rules related explanation has been intentionally skipped from notes. Students may consider reading NFRA Rules Pg. 10.16 to 10.18 of ICAI mat.

Concept clarity check:

- 1. Can an auditor be appointed for 4 years? No. He cannot be appointed for less than 5 years.
- 2. Can an audit firm be appointed as internal auditor during the cooling period? Yes! There is no such restriction. The only restriction is - such an audit firm cannot be apptd. as statutory auditor.
- 3. What if a company appoints



Section 140: Removal, resignation of auditor and giving of special notice

Removal of auditor:

Auditor appointed u/s 139 may be removed from his office before expiry of his term only by:

- > SR of the company
- \succ After obtaining previous approval of CG (Regional Director) in manner prescribed

Provided that - Before any such action, auditor shall be given ROBH.

Rule 7 - Manner of removal of auditor:

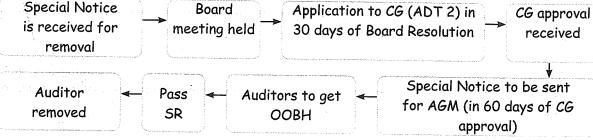
- > Application to CG shall be made within 30 days of BoD resolution in Form ADT-2.
- > Co. to hold GM for passing SR within 60 days of receipt of approval of CG.



Specified IFSC company where no decision is communicated by CG within 60 days - Deemed approval of CG and then CG to appoint auditor at GM within 3m from expiry of such 60 days.

Before removal, auditor shall be given OOBH (Audi Alteram Partem i.e., principal of natural justice to give OOBH)





2. Resignation of auditor:

- Auditor who has resigned shall,
- > file within 30 days from date of resignation,
- > a statement in Form ADT-3 with the company and Registrar and C&AG (only in case of Govt. co)
- indicating reasons and other facts as may be relevant with regard to his resignation.
- 3. Contravention: Auditor fails to comply with provision u/ss (2) Liable to: Penalty of - Lower of Rs. 50,000 or an amount equal to remuneration of auditor In case of continuing failure - Further penalty of Rs. 500/day after the first - Max Rs. 2 lakhs

- 4. Special notice for removal of auditor and representation thereon by auditor
 - (i) Special notice (u/s 115) shall be required for resolution at AGM for:
 - a. appointing a person other than a retiring auditor, or
 - b. providing expressly that retiring auditor shall not be re-appointed, except where retiring auditor has completed consecutive tenure of 5/10 years.
 - (ii) On receipt thereof Company shall forthwith send a copy thereof to the retiring auditor.
 - (iii) Where notice is given + retiring auditor makes representation in writing (not exceeding a reasonable length) and requests its notification to members, the company shall, unless the representation is received by it too late for it to do so:
 - a. in notice given to members, state the fact that representation is made; and
 - b. send copy of representation to every member,
 - c. if copy thereof couldn't be sent (cause it was received too late or due to cos. default):
 - > auditor may require the representation to be read out at the meeting (without prejudice to his right to oral representation)*
 - > a copy of such representation shall be filed with the Registrar:

*Tribunal may order not to send representation:

- ightharpoonup On application (in Form NCLT-1) by co/aggrieved person, if Tribunal is satisfied that w rights are being abused,
- > It may order that such copy may not be sent, and representation need not be read out
- 5. Tribunal may order to change auditor:
 - > Tribunal may:

suo motu appln. by CG (in Form NCLT 9) appln. by person concerned (in Form NCLT 9)

- \triangleright if it is satisfied that auditor has (directly or indirectly):
 - o acted in a fraudulent manner or
 - o abetted or colluded in any fraud by, or in relation to, Co., its Directors or officers,
- > it may, by order, direct the company to change its auditors.

Instead of directing the company, Tribunal may itself change auditor:

If application is made by CG and Tribunal is satisfied that any change of the auditor is required it shall, within 15 days of receipt of such appln, make an order that:

- > he shall not function as an auditor and
- > the CG may appoint another auditor in his place:

<u>Debarring the auditor</u>: An auditor (indv/firm) against whom final order has been passed under this section shall:

- > not be eligible to be appt. as an auditor of any co. for 5 years from passing of such order and
- > the auditor shall also be liable for action u/s 447.

 $\underline{\text{Note}}$ - In case of a firm, the liability shall be of the firm and that of every partner (s) who acted in a fraudulent manner or abetted or colluded in any fraud by, or in relation to, the co., dir. or officers.



Section 141: Eligibility, qualifications and disqualifications of auditors

- 1. Eligibility:
 - A person shall be eligible for appt. as auditor only if he is a CA.
 - A firm where majority (not all) of partners are CAs practicing in India Such firm may be appt.
- 2. Who will sign on behalf of firm: Where a firm including LLP is appointed as an auditor only the partners who are CAs shall be authorised to act and sign on behalf of the firm.
- 3. <u>Disqualification:</u> Following persons shall not be eligible for appt. as auditor of a company, namely:
 - (a) Body Corporate (other than LLP)
 - (b) an officer or employee of the company;
 - (c) a person who is a partner or employee of an officer or employee of the company;
 - (d) a person who, or his relative or partner:
 - (i) is holding any security of CASH OR SOH.

 <u>Except</u> Relative may hold security in company or ASH of face value not > Rs. 1 lakh;
 Note
 - 1. If relative acquires security above Rs. 1 lakh, corrective action to maintain limits if Rs. 1 lakh shall be taken by the auditor within 60 days of such acquisition or interest.
 - 2. Holding of all the relatives shall be taken in aggregate to check threshold.
 - (ii) is indebted to the CASH or SOH > Rs. 5 lakhs
 - (iii) has given guarantee or provided security w.r.t., indebtedness of any third person to CASH or $SOH > Rs.\ 1$ lakh.
 - (e) a person or a firm who, whether directly or indirectly, has business relationship with CASH or SOH or associate of such holding co.;

Business Relationship: Any transaction entered into for a commercial purpose, except:

- (i) transactions which are in nature of prof. services permitted to be rendered by auditor;
- (ii) transactions in OCOB of company at arm's length price
- (f) person whose relative is a director or is in employment of company as a director or KMP;
- (g) a person who is in full time employment elsewhere, or, a person or a partner of a firm holding appointment as its auditor, if such persons or partner is at the date of such appointment or reappointment holding appointment as auditor of > 20 cos;

While calculating the limit of 20 companies:

- 1. Exclude OPC, small co., dormant company and private cos. having PUSC < Rs. 100 crores
- 2. In case of firm, the limit of 20 shall be for each partner. i.e., limit of 20 is per person.

- (h) a person who has been convicted by a court of an offence involving fraud and a 10 years has not elapsed from the <u>date of such conviction</u>;
- (i) a person who, directly or indirectly, renders any service referred to in section 144 to the company or its holding company or its subsidiary company or its associate.
- 4. Where person appt. as an auditor incurs any disqualifications mentioned u/ss (3) after appt., he shall vacate his office and it shall be deemed to be a casual vacancy in the office of the auditor.



Section 142: Remuneration of auditors

- 1. Remuneration to be fixed at GM or in such manner as may be determined in such GM. For first auditor BoD to fix remuneration.
- 2. Remuneration shall, in addition to fee payable to an auditor, include:
 - > expenses incurred in connection with such audit and
 - > any facility extended to him

but does not include any rem. paid to him for any other service rendered at request of co.

Concept clarity check:

Can engagement letter be signed without stating fees and merely stating that fees shall be decided mutually? - Yes! Such engagement letter is valid.



Section 143: Power and duties of auditors and auditing standards

- 1. Power of auditors: Every auditor of a company shall:
 - > have right of access at all times to BoA of co., whether kept at RO or at any other place &
 - be entitled to require from officers such info & explanation (I&E) as may be necessary for performance of his duties, and
 - have right to access records of all its subsidiary or associate cos. in so far as it relates to the consolidation of its FS with that of its subsy and associate cos.

<u>Inquiry by auditor</u>: Amongst other matters, auditor to inquire into following matters:

- (a) whether loans & advances on the basis of security have been properly secured and whether term thereof is prejudicial to interest of co/members.
- (b) whether transactions which are represented merely by book entries are prejudicial to interest of co.
- (c) whether asset of co. as consist of shares, debentures or other securities have been sold at price < purchase price (except in case of investment co. or banking co.)
- (d) whether loans & advances have been shown as deposits.
- (e) whether personal expenses have been charged to revenue account
- (f) where it is stated in books that shares have been allotted for cash:
 - > whether cash is actually received, and
 - > if no cash is received, whether BoA and Balance sheet is correct, regular and no misleading

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2. <u>Auditor Report:</u> Auditor shall make a report to members of the co.:

Report on:

- Accounts examined.
- Every FS laid before co. in GM

After taking into account:

- Provision of this Act
- · AS and SAs
- Matters to be included in Auditor's report.

Express opinion:

- To the best of his info. and knowledge
- Accounts and FS give true & fair view of state of co's affairs at end of FY.

3. Auditor's report shall also state:

- (a) Info. and explanations (I&E):
 - > Whether sought and obtained all I&E which to best of his knowledge is necessary for audit
 - > If not, details thereof and effect of such info. on FS

(b) Books of accounts:

- whether, in his opinion, proper BoA as per law have been kept by co. (as per his examination)
- > proper returns adequate for his audit have been received from branches not visited by him:

(c) Branch auditor's report

- > whether report on BoA of any branch office audited u/ss (8) by person other than company's auditor has been sent to him and
- > manner in which he has dealt with it in preparing his report;
- (d) whether BS and P&L dealt with in report are in agreement with BOA and returns;
- (e) whether FS comply with the AS;
- (f) observations or comments of auditors on financial transactions or matters which have any adverse effect on the functioning of the company;
- (g) whether any director is disqualified u/s 164(2);
- (h) any qualification, reservation or adverse remark relating to maintenance of accounts and other matters connected therewith;
- (i) whether co. has adequate IFC w.r.t FS in place and operating effectiveness of such controls Reporting on IFC shall not apply to a private co (92+137):
 - > which is OPC or small co.
 - > which has T/O < Rs. 50 crores and aggregate borrowing from bank/PFI < Rs. 25 crores
- (j) such other matters as may be prescribed

Rule 11: Other matters to be included in Auditor's report:

Include their views and comments on the following matters, namely:

- (i) whether co. has disclosed impact of pending litigations on its financial position in its FS;
- (ii) whether co. has made provision (as per law or AS) for material foreseeable losses, if any, on long term contracts including derivative contracts;
- (iii) whether there is any delay in transferring amt. to IEPF by the company.
- (iv) Omitted
- (v) Ultimate Beneficiaries:
 - i. Whether mgt. has represented that no funds has been advances or lent to any person (intermediary) with an understanding that such intermediary shall lend such funds on behalf of co. to ultimate beneficiary or provided any guarantee or security on behalf of such ultimate beneficiary.
 - ii. Whether mgt. has represented that no funds has been received by the company from any person ("Funding parties") with an understanding that the co. shall lend such funds to ultimate beneficiary or provided any guarantee or security on behalf of such ultimate beneficiary.
 - iii. Nothing has come to the notice of auditor that caused him to believe that above representations contain any material misstatement.
- (vi) whether the dividend declared or paid during the year is in compliance with sec 123.
- (vii)W.r.t. FY commencing on or after 1/4/22, whether company has used accounting software for maintaining BoA which:
 - > has a feature of recording audit trail facility and
 - > same has been operated throughout the year for all transactions recorded therein &
 - > audit trail feature has not been tampered with and
 - $\,>\,$ audit trail has been preserved as per statutory requirements for record retention.
- 4. Where any matter included in audit report is answered in negative or with a qualification, the report shall state the reasons therefor.
- 5. In case of Govt co. or Govt controlled companies:
 - > C&AG to appoint auditor u/s 139(5) or 139(7)
 - > Direct such auditor the manner in which accounts are to be audited, and
 - > Auditor to submit a copy of audit report to C&AG which will include:

Directions issued by C&AG

Action taken thereon

Impact on accounts and FS

6. <u>C&AG may order supplementary audit.</u>

C&AG shall, within 60 days of receipt of audit report, have right to:

- (a) conduct supplementary audit of FS by person as he may authorise in this behalf.

 For the purpose of such audit, authorized person may require info. as C&AG may direct.
- (b) comment upon or supplement such audit report.

 Provided that any such comments by C&AG shall be:

- sent by co. to every person entitled to copies of audited FS u/s 136 and
- · also be placed before AGM along with audit report.
- 7. C&AG may, if he considers necessary, by an order cause test audit to be conducted of the BoA of such co. covered u/s 139 (5) or (7)

8. Branch office:

Branch is in India:

Where co. has a branch office, BOA of branch office shall be audited either by:

- · Auditor appointed for co. (Co's auditor), or
- By any other person qualified for appt.
 as auditor of co. & appointed as such for branch audit

Branch is outside India:

Where co. has a branch office outside India, BoA shall be audited either by:

- · Company's auditor, or
- accountant or any other person duly qualified to act as auditor as per law of that country.

Note:

- > Duties and power of company's auditor w.r.t. branch audit shall be as per Sec 143(1) to (4)
- > Branch auditor to prepare report on BoA of branch examined by him and send it to Co's auditor
- > Co's auditor shall deal with such report in his report in manner as he considers necessary.
- 9. Every auditor shall comply with the auditing standards (SAs).
- 10. CG may prescribe SAs or any addendum thereto, as recommended by ICAI, constituted u/s 3 of CA Act, 1949, in consultation with and after examination of recommendations made by NFRA Provided that - Until such SAs are notified, SAs notified by ICAI shall be deemed SAs
- 11. CG may, in consultation with NFRA direct that auditor's report may include such other matters as may be specified.

12. Reporting of Fraud by Auditor:

- > If an auditor of a co..
- in course of performance of his duties as statutory auditor,
- has reasons to believe that an offence of fraud, involving individually amount >= Rs. 1 crore,
- > is being committed against the co. by its officers or employees,
- \succ the auditor shall report the matter to CG.

Report to (CG as under:		
Inform	Auditor to report matter to AC or BoD immediately (not > 2 days) of his knowledg		
AC/BoD	seeking reply within 45 days		
Forward	On receipt of reply - Auditor to forward his report + AC/BoD reply + his comments		
to CG	thereon to CG within 15 days of reply.		
	In case of no reply - Forward his report + note that details were forwarded to AC/		
	BoD for which no reply received (within 15 days)		
Mode	The report shall be sent to:		
	> Secretary, MCA in a sealed cover		
	by Registered Post with acknowledgment due (RPAD), or speed post		
	> followed by an email in confirmation of the same		
	The report shall be sent:		
	> in Form ADT - 4		
	> on letter-head of auditor containing address, email and phone number		
	> and signed by auditor with his seal ,and indicate membership no.		
Fraud <	Auditor shall report the matter to AC u/s 177 or BoD immediately (not > 2 days) of		
Rs. 1 cr.	his knowledge and report the following matter [NAP]:		
Nature of fraud with description Approx. amount involved Pa			
	Of each fraud reported above, following details shall be disclosed in BOD report:		
	Nature of fraud with description Approx. amount involved		
	Parties involved, if remedial action not taken remedial action taken		
Above pro	ovision to apply mutatis mutandis to cost auditor & secretarial auditor.		

13. Report fraud can never lead to contravention of duty (E.g., - confidentiality):

No duty of an auditor shall be regarded as having been contravened by reason of his reporting the matter u/ss (12) if it is done in good faith.

Penalty:

If any auditor, cost accountant or CS in practice do not comply with provisions of fraud u/ss (12):

- (a) in case of a listed company, be liable to a penalty of Rs. 5 lakh; and
- (b) in case of any other company, be liable to a penalty of Rs. 1 lakh

Concept clarity check:

If some of the employee did fraud of Rs. 10 crores on the co. and such fraud was brought to the notice of the auditor by the management of the co., would auditor be required to report it to CG? No. As per sec 143(12), only fraud that the auditor identified himself in course of audit is to be brought to attention of CG. Here, the auditor just need to report to AC/BoD. Not CG.





Section 144: Auditor not to render certain services.

An auditor appointed under this Act shall:

- provide to co. only such other services as are approved by AC/BoD but
- > which shall not include following services (directly or indirectly) to CASH, namely [KIS A BF OM]:

accounting and book keeping services;

internal audit design and implementation of any financial info. system

actuarial services

investment advisory and banking services

rendering of outsourced financial services

management services others as prescribed

Explanation: For this section, "directly or indirectly" shall include rendering of services by auditor:

l	Individual	Himself, relative, other connected person or entity in which he has significant influence
	Firm	Itself, partners, parent, subsidiary or associate entity or other entity in which firm/
		partner has significant influence.

Concept clarity check:

- > Can a statutory auditor be appointed as GST auditors or tax auditors? Absolutely, yes.
- > Can a statutory auditor be appointed as cost auditors? No. Specifically restricted u/s 148



Section 145: Auditor to sign audit reports, etc.

Auditor shall sign Auditor's report or sign/ certify any other doc. as per sec 141(2), and QOC on financial transactions having adverse effect on functioning of co. mentioned in auditor's report shall be:

- > Read out before co. in GM.
- > Open to inspection by any member



Section 146: Auditors to attend general meeting:

Notice related to GM to be sent to auditor

Auditor shall attend GM either himself or through Auth. Rep.

Auditor shall have right to be heard on business which concerns him as auditor



Section 147. Punishment for contravention

1. Contravention u/s 139 to 146:

Co. - Fine - Rs. 25,000 to Rs. 5 lakhs OID - Fine - Rs. 10,000 to Rs. 1 lakh

2. <u>Auditor contravenes u/s 139, 144, 145</u>:

Fine - Rs. 25,000 to Lower of - (Rs. 5 lakhs or 4x remuneration of auditor)

If such contravention is knowingly or wilfully to deceive co./SHs or crs or tax authorities: Imprisonment - Up to 1 year AND

Fine - Rs. 50,000 to Lower of - (Rs. 25 lakhs or 8x remuneration of auditor)

- 3. Where auditor is convicted u/ss (2), he is liable to:
 - a. refund remuneration
 - b. pay damages to co/stat bodies or members or creditors for loss arising out of incorrect or misleading statements made in his audit report
- 4. CG shall, by notification, specify any statutory body or officer for ensuring prompt payment of damages u/ss (3) and such person specified shall, on payment file report with CG
- 5. In case of an audit firm, it is proved that partner(s) of such firm:
 - > acted in a fraudulent manner or
 - > abetted/colluded in any fraud against co.

the liability (civil or criminal) as per this Act or other law, for such act shall be of partners concerned of the audit firm and of firm - jointly and severally

In case of criminal liability, punishable with only imprisonment - Only concerned partners liable



Section 148: CG to specify audit of items of cost in respect of certain companies.

Read with Companies (Cost Records and Audit) Rules 2014

- 1. <u>CG to order maintaining cost record:</u>
 - Notwithstanding anything contained in this Chapter,
 - > the CG may, by order, cos. engaged in production of prescribed goods or providing prescribed services.
 - direct that particulars relating to utilisation of material or labour or other items of cost as may be prescribed shall also be included in BoA

Provided that, prior to passing such order for companies regulated under special act, CG shall consult the concerned regulatory body.

🔼 Rule 3: Applicability of cost records: .

- Companies [including foreign co. u/s 2(42)] engaged in production of goods or providing service as specified in Table A (6 Regulated sectors) and Table B (33 non-regulated sectors)
- > having overall T/O of >= Rs. 35 crores in immediately preceding FY shall maintain such cost records.
- Non-Applicability: Micro Enterprise /Small Enterprise as defined u/s 9(7) of MSMED Act, 2006

Rule 5: Maintenance of records

- > Cost records to be maintained in Form CRA-1
- > Maintain such records on a regular basis to facilitate calculation of per unit cost for each product every FY.
- > Cost records shall be maintained to enable co. to exercise control over various costs to achieve optimum economies in utilisation of resources.

2. CG may order audit of such cost records:

If CG is of opinion, that it is necessary to do so, it may, by order, direct audit of such cost records of such companies having net worth or turnover of such amount as may be prescribed.

Cost statements shall be signed by the BoD before they are submitted to auditor for reporting.

Rule 4: Applicability of cost audit

·	Overall Annual Turnover	Turnover of Individual products for which records in maintained under Rule 3	
Regulated Sector Companies	Rs. 50 crores	Rs. 25 crores	
Non-Regulated Sector Companies	Rs. 100 crores	Rs. 35 crores	

Non-Applicability of this Cost Audit (for companies maintaining Cost Records u/Rule 3)

- 1) Revenue from exports in Forex > 75% of total revenue OR
- 2) Operating from SEZ
- 3) Engaged in generation of electricity for captive consumption through Captive Generating Plant.
- 3. Manner of appointment and remuneration of cost auditor:

In case of cos. required to constitute AC:

- (a) On recommendation of AC, BoD to appoint an individual/firm of cost accountant in practice.
- (b) Remuneration thereof shall be recommended by AC, considered and approved by BoD and ratified by SH

In case of other companies:

- (a) BoD to appoint an individual/firm of cost accountant in practice
- (b) Remuneration thereof, considered and approved by BoD and ratified by SH subsequently.

Important note - Auditor u/s 139 of the company cannot be appointed as auditor of cost records.

- Appointment Cost Auditor shall be appointed within 180 days of commencement of every FY.
- Provided that before such appointment is made obtain
 - 1) Written consent of the cost auditor to such appointment, and
 - 2) A certificate that
 - (a) the individual/firm is eligible for appointment and is not disqualified for appointment under Cost and Works Accountants Act, 1959) and rules thereunder
 - (b) the individual or the firm satisfies the criteria provided u/s 141 of Companies Act, 2013
 - (c) the proposed appointment is within the limits laid down by authority of the Act; and
 - (d) the list of proceedings against the cost auditor/audit firm or any of the partner pending with respect to professional matters of conduct, as disclosed in the certificate, is true and correct.

- > Cost Auditor/Firm shall be informed of his or its appointment as such and file a notice of such appointment with the CG in form CRA-2 (+ fees) within earlier of:
 - 1) within 30 days of Board meeting in which such appointment is made or
 - 2) within 180 days of the commencement of the financial year,
- Term: Till the expiry of 180 days from the closure of the FY or till he submits the cost audit report, for the FY for which he has been appointed.
- Removal before expiry of Term:
 - 1) Board resolution after giving ROBH to the Cost Auditor and recording the reasons for such removal in writing.
 - 2) Form CRA-2 with CG for intimating appointment of another cost auditor to be enclosed with the relevant Board Resolution for Removal of the Cost Auditor.
- Pasignation: Nothing contained herein shall prejudice the right of cost auditor to resign.
- Casual Vacancy: In case of Casual Vacancy, whether due to resignation, death or removal, it shall be filled by the BoD in 30 days and inform CG of such appointment within 30 days in Form CRA-2
 Such cost audit shall comply with cost auditing standards as issued by ICAI (Cost) + CG
- 4. Audit u/s 148 is in addition to audit u/s 143
- 5. Qualifications, disqualifications, rights, duties and obligations applicable to auditors under this Chapter shall, so far as may be applicable, apply to a cost auditor

Report on the audit of cost records

- > To be submitted by Cost Accountant to BoD in 180 days from end of FY to which it pertains
- > along with reservations or qualifications or observations or suggestions, if any,
- in form CRA-3
- 6. Forward cost auditor's report to CG along with explanation of reservations:

 Co. shall within 30 days from date of receipt of cost audit report Furnish CG (Form CRA-4) with such Report + Full I&E on every reservation or qualification contained therein.
- 7. On receipt of report + info. u/ss (6), if CG is of opinion that further I&E is necessary it may call for such further I&E and co. shall furnish the same within time specified by CG
- 8. Default under this section:

Co. and OID - Punishable u/s 147 (1)

Cost auditor - Punishable u/s 147 (2) to (4)

NFRA [NATIONAL FINANCIAL REPORTING AUTHORITY] AND AUDITOR

Read with NFRA Rules, 2018

Compliance with SAs

Filing of Return (Rule 5)

Quality and Improvement (Rule 9)

Monitoring and enforcing Compliance with SAs (Rule 8)

1. NFRA may:

- > Review working papers (including audit plan and other audit documents) and related communications
- > Evaluate the sufficiency and documentation of the quality control system of auditor and
- > Perform such other testing of the audit, supervisory, and quality control procedures of the auditor as considered necessary or appropriate.

2. NFRA may require:

- > Require an auditor to report on its governance practices and internal processes designed to promote quality, protect its reputation and reduce risks of the auditor
- > Seek additional Info/Expln in connection with conduct of Audit/require personal presence.
- > Send a separate report containing proprietary or confidential information to CG.
- Where the NFRA finds or has reason to believe that any law or professional or other standard has or may have been violated by an auditor, it may decide on the further course of investigation or enforcement action through its concerned Division.

3. NFRA shall

- > Perform its monitoring and enforcement activities through its officers or experts with sufficient experience in audit of the relevant industry.
- > Publish its findings relating to non-compliances on its website and in such other manner as it considers fit, unless it has reasons not to do so in public interest and it records reasons in writing.
- 4. NFRA shall not publish proprietary or confidential information, unless it has reasons to do so in the public interest and it records the reasons in writing.

Filing of Return with NFRA (Rule 5)

- Every auditor of classes of companies and body corporate governed by NFRA
- > File a return on or before 30th November every year in Form NFRA-2

Overseeing Quality and suggesting Improvement (Rule 9)

NFRA is empowered for overseeing the quality of services and suggesting measures for improvement

- On the basis of its review, direct auditor to take measures for improvement of audit quality including changes in their audit processes, quality control, and audit reports and specify a detailed plan with time-limits.
- > It shall be the duty of auditor to make required improvements and send a report explaining how it has complied with the directions made by the NFRA.



- > NFRA shall monitor the improvements made by the auditor and take such action as it deems fit depending on progress made by the auditor.
- > NFRA may refer such cases to the Quality Review Board constituted under the Chartered Accountants Act, 1949 or call for any report or information in respect of such auditors or companies or body corporates from such Board as it may deem appropriate.
- > The NFRA may take the assistance of experts for its oversight and monitoring activities.

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